

UNAPPROVED
VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS
BOARD MEETING MINUTES

The Virginia Board of Funeral Directors and Embalmers convened for a board meeting on Tuesday, April 13, 2010 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Conference Room 2, Henrico, Virginia.

BOARD MEMBERS PRESENT

Randolph T. Minter, FSP, President
Michael J. Leonard, FSP, Vice President
Robert B. Burger, Jr., FSP, Secretary-Treasurer
Walter S. Ball, Citizen Member
Billie Watson-Hughes, FSP
Rev. Yvonne Jones-Bibbs, Citizen Member
Willard. D. Tharp, FSP
Barry M. Murphy, FSP

BOARD MEMBERS ABSENT

Blair Nelsen, FSP

DHP STAFF PRESENT

Lisa R. Hahn, Executive Director
Elaine J. Yeatts, Senior Policy Analyst
Jeanette Meade, Licensing Administrative Assistant

BOARD COUNSEL

Amy Marschean, Senior Assistant Attorney General

QUORUM

With 8 members present a quorum was established.

GUESTS PRESENT

Bernie Henderson, Woody Funeral Home
Michael Nicodemus, CANA & Holloman-Brown Funeral Home
Barry D. Robinson, Virginia Morticians Association
David Partridge, Regulatory Support Services, Inc.
Bruce Keeney, Independent Funeral Homes of Virginia
Bo Keeney, Independent Funeral Homes of Virginia
Lacy Whittaker, Virginia Funeral Directors Association
Neal Kauder, President, VisualResearch, Inc.
Kim Langston, VisualResearch, Inc.

CALL TO ORDER

Mr. Minter, President, called the meeting of the Virginia Board of Funeral Directors and Embalmers to order at 10:00 a.m.

ORDERING OF AGENDA

Upon a motion by Mr. Leonard and properly seconded by Ms. Hughes, the Board voted to accept the amended agenda. The vote carried unanimously.

ACCEPTANCE OF MINUTES

Upon a motion by Ms. Hughes, the Board voted to accept the amended minutes. The motion was properly seconded by Mr. Tharp. The vote carried unanimously.

PUBLIC COMMENT PERIOD

During the public comment period the Board Chair asked the audience to introduce themselves. Mr. Robinson requested the Board to give clarification regarding depositing money in an escrow account.

EXECUTIVE DIRECTOR'S REPORT

Expenditure and Revenue Summary

Ms. Hahn stated that the beginning cash balance as of June 30, 2009 was \$19,797, revenue received for FY 10 was \$228,833, less the direct and allocated expenditures of \$336,802, leaving a cash balance as of February 28, 2010 of \$(88,172). Ms. Hahn indicated that the majority of revenue for this board is received in March from the yearly renewals.

Licensee Statistics

Ms. Hahn reported that there are 1,498 Funeral Service Providers, 161 Funeral Interns, 495 Funeral Establishments, 5 Embalmers, 87 Funeral Directors, 16 Branch Establishments, 85 Crematories, 30 Continuing Education Providers, 98 Courtesy Card and 56 Surface Transportation and Removal Services.

Discipline Statistics

Ms. Hahn stated we have 35 open cases; 29 cases are in the Enforcement Division at the Investigative stage; 4 cases are in the Probable Cause stage; 1 case is in the Administrative Proceedings Division stage; 1 case is at the Informal stage.

Virginia Performs

Ms. Hahn reported we have achieved a 100% rating for issuing licenses in less than 30 days and we achieved a 100% rating for patient care cases closed within 250 days. We did not have any customer satisfaction surveys returned this cycle.

Ms. Hahn reported that she presented at the Virginia Funeral Directors Association Winter Conference along with Ms. Hughes, which was held on January 26, 2010 and she presented again at their Central District meeting held on March 19, 2010. She also presented at the Blue Ridge Funeral Association on January 19, 2010. Ms. Hahn did a presentation for the Independent Virginia Funeral Home Association which was held on March 26, 2010.

Calendar

Ms. Hahn discussed the calendar regarding rescheduling the July 13, 2010 meeting and scheduling an additional meeting for the legislative committee to be held in May or July 2010.

NEW BUSINESS

Sanction Reference Point Evaluation-Neal Kauder

Mr. Kauder, provided the Board members a handout of the agreement monitoring, a profile of departure cases and sanction recommendation. He stated that the sanction reference form was a voluntary tool used to assist with maintaining consistency with the board cases. It has been used by the board for the past six years and now they want to check with the boards to discuss whether it is achieving its goal.

Upon a motion by Mr. Burger and properly seconded by Mr. Murphy, the Board recommend to amend the sanction reference form with regards to the multiple violations offense factors. The vote carried unanimously.

Discussion Regarding Refunds on Irrevocable Trusts- W. D. Tharp

Mr. Tharp stated after his research with the various funding companies and the Department of Social Services in the matter of irrevocable trust being used as the funding source in any contract cannot be cancelled. The Board reviewed the Preneed regulation regarding 18VAC-65-30-110 and 18VAC-65-30-230.

The Board wants 18VAC-65-30-110.D to be changed as follows:

If the contract buyer uses an irrevocable trust as the funding source and terminates the contract after 30 days, the contract buyer shall not be eligible for a refund.

Upon a motion by Mr. Tharp and properly seconded by Ms. Hughes, the Board voted to change 18VAC-65-30-110.D as amended above. The vote carried unanimously.

Legislative and Regulatory Report – Elaine Yeatts

Ms. Yeatts discussed each of the following House Bills 201, 278, 319, 382, 650, 662. She went over each change or addendum and she stated that these House Bills will become law on July 1, 2010.

We discussed House Bill 201 regarding the language “no more than approximately 40 degrees”. The board discussed allowing a 10% variance of the required temperature.

Upon a motion by Mr. Leonard and properly seconded by Mr. Tharp, the Board voted to accept a 10% variance of the required temperature and to place it in the inspection guidance document. The vote carried unanimously.

Withdraw the NOIRA related to Refrigeration

Ms. Yeatts asked the Board to consider withdrawing the NOIRA related to establish standards for refrigeration, transportation and storage of human remains.

Upon a motion by Mr. Tharp and properly seconded by Mr. Leonard, the Board voted to withdraw the NOIRA. The vote carried unanimously.

Final Exempt Action-Name Correction

Ms. Yeatts asked the Board for a motion on the final exempt action to correct the name with the regulation 18VAC-65-20-240.B.

Upon a motion by Ms. Hughes and properly seconded by Mr. Tharp, to correct the name in the final exempt action. The voted carried unanimously.

Discussion Regarding Unlicensed Funeral Personnel

The board discussed unlicensed funeral personnel but decided to allow board counsel to review and advise at the next board meeting.

Draft Inspection Guidance Document #65-11

The Board reviewed the inspection guidance document and made a few changes. They were very pleased with the document.

Upon a motion by Mr. Murphy and properly seconded by Mr. Leonard the guidance document will be amended. The vote carried unanimously.

Discussion Regarding Cremation Re-certification program

Based on the minutes from September 15, 2009 the Board voted that the managers and the crematory operators must be recertified every 5 years but voted to amend that decision and require only the initial certification course.

Upon a motion by Mr. Tharp and properly seconded by Mr. Leonard, the motion was unanimously approved.

Internship Subcommittee Summary

Ms. Hughes stated that the committee met with the mortuary colleges and discussed their program and how it works with our internship program. She referred the board members to the minutes of the internship meeting.

Other Business Updates

The Board would like to have a regulation added regarding an exemption for the requirement of continuing education for the first year renewal cycle for funeral service providers.

Blair Nelsen has offered to catalog and bury the unclaimed cremains from Kip Jordan's Funeral Home at no cost to the board.

Issues Raised About Preneed

The board received a letter regarding preneed issues, insurance issues and Medicaid spend down. The board plans to invite SCC-Bureau of Insurance along with Medicaid to a meeting to discuss these issues. The board members who volunteered to serve on this committee are Billie Watson Hughes, Mike Leonard, Barry Murphy, and Skip Tharp.

ADJOURNMENT:

With no further business before the Board, the meeting adjourned at 12:30 p.m.

Randolph T. Minter, President

Lisa R. Hahn, Executive Director

Date

Date

GUIDANCE DOCUMENT 65-11 FOR INSPECTORS

Revised on April 13, 2010

Question #1 – Can refrigeration be provided at another location, branch or main establishment other than the crematory location?

Answer #1 – Yes, the crematory can arrange for off-site refrigeration. A letter from the provider of the refrigeration should be requested during the inspection.

Question #2 – If a funeral home or crematory transports a body from the hospital or place of death, does the body have to be in a cremation container?

Answer #2 – The intent of the regulation is that upon arrival at the funeral home the decedent shall be placed in a cremation container for transfer to the crematory.

Question #3 – Is the DEQ permit number of the retort required on every form in the deceased's cremation record?

Question #3 – No, it is only required to be listed on one form in the decedent's cremation record.

Question #4 – Can a crematory that operates within a funeral establishment have a separate manager of record or can the establishment's manager serve as the manager of record for both?

Answer #4 – Yes, a manager of record of the funeral establishment can also serve as manager of record of the crematory or they can have two separate managers. However if the manager of record of the crematory is not a licensee, the establishment's manager of record is ultimately responsible for both the establishment and the crematory.

Question #5 – If a crematory is not a funeral establishment or a branch of a funeral establishment, can they sell preneed?

Answer #5 – No, they must be licensed as a funeral establishment or a branch of a funeral establishment.

Question #6 – Do the regulations still require a contract number on a preneed contract?

Answer #6 – No, however the funeral home must be able to show verification of the funding and payment.

Question #7 – What duties can unlicensed staff perform in the preparation of the body?

Answer #7 - The board stated that an unlicensed person could assist with cosmetizing, dressing and casketing the deceased. The board will be conducting further legal research concerning this question.

Question #8 – When a funeral home takes arrangement instructions from another funeral home on an at-need contract, whose signature should be on the buyer's signature line?

Answer #8 – It is not mandated by regulations but is suggested to have the calling funeral home's name and the name of the funeral director who is giving instruction on the buyer's signature line.

Question #9 – Can a funeral home keep a log or spreadsheet versus an individual embalming record?

Answer #9 – No, 18VAC65-20-510 clearly requires that every funeral establishment shall record and maintain a separate, identifiable report for each embalming procedure conducted, which shall at a minimum include the following: the deceased's name and date of death, the date and location of the embalming, the name and signature of the embalmer and the license number of the embalmer and if the embalming was performed by a funeral service intern and if so the signature of the supervisor, location of embalming, date of death, date of embalming,

Question #10 – If a funeral home lists the full price of a package on the Statement of Goods and Services must it also identify on the contract the specific items that are included in the package?

Answer #10 - Yes, either list them individually on the Statement of Goods and Services or place an asterisk around each item included in the package on the contract. The intent is that the reader can understand which items are included in the package.

Question #11- Is it acceptable to the board for a license to be posted in a private business office?

Answer #11- No, a public lounge or an arrangement room is acceptable. The regulation states that each licensee shall post an original or photocopy of his license in a place conspicuous to consumers of funeral services in each establishment or branch where he is employed.

Additionally, if the funeral establishment uses contract embalmers only on rare occasions, a funeral home does not have to post that embalmer's license as long as the funeral home keeps it on file (Board approved 12/06)

Question #12 – If the preparation room at the main establishment is not used must it still be inspected?

Answer #12- For every licensed funeral establishment, there must be an operable preparation room at either the main establishment or at a branch establishment. Even if a preparation room at the main establishment is not used, it shall be inspected and contain requirements and must be operable.

Question #13 – Can enamel based paint be used as a material impervious to water?

Answer #13 - Enamel based paint is considered impervious to water and is an acceptable material for the floor and wall surfaces.

Question #14 - If the preparation room is kept clean and sanitary but the floor has some permanent stains on it should it be cited as a deficiency?

Answer #14 – No, permanent or irreversible stains due to embalming procedures are acceptable and should not be cited as a deficiency.

Question #15 - Are telephones, telephone books, radio allowed to be in the preparation room?

Answer #15 - Telephones, telephone books and radios are acceptable. Additionally, items or supplies necessary in the preparation of a body or related to an embalming procedure are acceptable.

Question #16 - May a drainage tube be connected to the embalming table and run straight into the sewer?

Answer #16 – Yes, the regulations states that the preparation room shall be equipped with a flush or slop sink connected with public sewer or with septic tank where no public sewer is available.

Question #17 - Can the disinfectants and antiseptic solutions be stored on the floor in the preparation room in properly labeled containers?

Answer #17 – Yes, both disinfectants and antiseptic solutions may be stored on the floor of the prep room in properly labeled containers. Antiseptics are used for hand-washing and personal hygiene. Most disinfectants are commercial and generic brands are acceptable. Bleach may be used for disinfecting, but cannot be mixed with formaldehyde. The two chemicals together become combustible.

Question #18 – What type of evidence does the board want regarding disposal of waste materials?

Answer #18 - Disposal of all waste materials shall be in conformity with local, state, and federal law and regulation to avoid the possible spread of disease. The funeral service establishment shall provide evidence of a current contractual agreement with or services provided by a licensed medical waste disposal company. Evidence may include a letter of agreement, a contract or a recent billing for the service.

Question #19 – Will the board accept electronic copies of requested documents that are no longer current?

Answer #19 – Yes, the Board will accept electronic copies of forms that are no longer current.

Question #20 – Can the main funeral service establishment maintain all records, including those for branch establishments with the exception of embalming reports, which must be maintained at the site of embalming.

Answer #20 - Yes

Question #21 – If the funeral home charges the same price for embalming of normal remains and autopsy remains, is it only necessary to list the charge once on the general price list?

Answer #21 – Yes

Question #22 – Can you provide guidance on the price range for the following categories?

Answer #22 –

Immediate Burial: Your prices should range from your immediate burial package with container provided by purchaser to your immediate burial package plus your most expensive casket. **This currently conflicts with Appendix 1 but it will be amended.**

Direct Cremation: A price range must be given for a direct cremation. Your prices should range from direct cremation with a container provided by the purchaser to the price for direct cremation plus the highest priced casket. Do not cite a funeral home that is complying and listing their most expensive casket on this list even if it is not a casket that is acceptable for cremation. When in doubt, please refer to Appendix 1 for reference or call the board office.

Funeral Merchandise: The casket and outer burial container price range shall match the Casket and Outer Burial Price Lists. The price does not include tax on the merchandise.

Outer Burial Container Price List: The required disclosure shall be required on the Outer Burial List and on the General Price List. (According to FTC, if the required disclosure is on the Outer Burial Container Price List, then it is not necessary to have it on the General Price List). Although FTC does not require the manufacturers' names on the price lists, the Board does require this as means to identify the caskets and outer burial containers.

Question #23 – Must the preneed chronological list be separate from the insurance company's list and can a blanket statement be used indicating if 10% of the funds are retained?

Answer #23 - The list may have a blanket statement indicating whether 10% of the funds are retained and if funeral merchandise is stored on the premises. The preneed chronological list must be separate from the insurance company's list and contain the required information stipulated in the Board's Preneed Regulation.

Question #24 – When do you add a name to the chronological list and when should you remove a name from the chronological list?

Answer #24 –The proper time to add a name to the chronological report is when the funeral director and the buyer sign the pre-need contract. The time to remove a name from the list is after the death of the contract beneficiary.

Question #25 – What is a proper ventilation system?

Answer#25 – The preparation room must have a ventilation system, which operates and is appropriate to the size and function of the room, and takes the air from the inside to the outside of the room. Holding a piece of paper near the vent usually will provide an adequate test for an operable ventilation system.

Question #26 - The final language in House Bill 201 is somewhat vague in the actual refrigeration requirement. The language reads “no more than approximately 40 degrees”. What temperature will be within acceptable limits?

Answer #26 - The Board agreed to accept a 10% variance of the required temperature.